

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-221540 **DATE:** April 21, 1986  
**MATTER OF:** Tenavision Inc.

**DIGEST:**

1. Protest that bid should be rejected for failing to comply with alleged descriptive data requirement in solicitation is timely where filed within 10 working days after bid opening.
2. Even if the contracting agency orally advised prior to bid opening that certain drawings must be submitted with bids, as alleged by the protester and denied by the agency, such advice is not binding upon the government.
3. Invitation's requirement for the submission of shop drawings and catalog cuts by the contractor clearly related to contract performance and did not require the submission of the information with the bid, especially where the invitation failed to include a descriptive literature clause specifically describing what information needed to be submitted with the bid and the consequences for failing to submit it.

Tenavision Inc., the second low bidder under invitation for bids (IFB) No. 561-13-86 issued by the Veterans Administration (VA), protests that the low bid should be rejected as nonresponsive. The protester argues that the IFB, for the replacement of several nurse call systems, required bidders to submit certain shop drawings and other data that the low bidder failed to submit with its bid. The agency proposes to award a contract to the low bidder.

We deny the protest.

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The IFB provided in pertinent part, as follows:

"1.3 SUBMITTALS:

A. Shop Drawings:

1. Submit shop drawings and catalog cuts for approval in accordance with Section 01340, SAMPLES AND SHOP DRAWINGS
- . . . . .
3. Sufficient information, clearly presented, shall be included to determine compliance with drawings and specifications."

The IFB's section 01340 (referenced above) defined shop drawings to mean drawings "submitted to the Government by the Contractor, subcontractor, any lower tier subcontractor pursuant to a construction contract." Paragraph "B" of the Submittals requirement described initial operating and maintenance manuals that had to be submitted simultaneously with the shop drawings, while paragraph "C" included a requirement for delivering a final updated operating and maintenance manual 2 weeks before final inspection.

Tenavision states that prior to bid opening, it asked the contracting agency whether the IFB required the submission of the shop drawings and catalog cuts with the bid and was orally advised that it must submit the information with the bid. The agency states that in response to Tenavision's inquiry, Tenavision was told that the information did not need to be submitted with the bid.

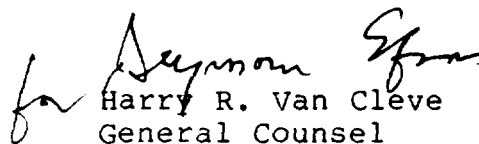
The agency asserts that to the extent Tenavision is protesting the IFB's failure to require submission of the information with the bid, the protest is untimely, citing our Bid Protest Regulations, 4 C.F.R. § 21.1(a)(1) (1985), which requires protests of apparent solicitation improprieties to be filed prior to bid opening. Regarding whether the IFB required submission of the information with the bid, the agency contends that the Submittals requirement clearly pertained only to the contractor's performance after award. Further, the agency notes that the solicitation did not contain the "Descriptive Literature" clause which is necessary to effect a requirement for the submission of descriptive literature with bids for evaluation purposes. See Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.201-6(P) (1984).

Initially, we find the protest timely. The basis for protest is that the proposed awardee's bid should be rejected for failure to comply with a purported requirement to include shop drawings and catalog cuts with the bid. The protest therefore does not concern an apparent solicitation impropriety, but the responsiveness of the proposed awardee's bid. Our Bid Protest Regulations provide that a protest involving other than a apparent solicitation improperly must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Since the protest was filed within 10 working days after bid opening, the protest of the proposed award clearly is timely.

To the extent that the protester's argument relies on the agency allegedly having advised Tenavision that the information had to be submitted with the bid, the agency denies having given such advice. In any event, bidders rely upon oral advice given before award at their own risk, and such advice is not binding upon the government. See, e.g., Douglas M. Andrews, B-218687, May 17, 1985, 85-1 CPD ¶ 571. In this regard, the IFB, presumably, included the FAR standard clause stating expressly that any oral explanations or instructions given before the award of a contract will not be binding. FAR, 48 C.F.R. §§ 14.201-6(c)(2) and § 52.214-6 (1984).

The protester's argument that the IFB required the submission of the information with the bid lacks merit since a reading of the Submittals provision and section 01340 as a whole clearly indicate that the submission requirements apply to contract performance, not to the preparation and submission of bids. In any event, a bid may not be rejected for its failure to include descriptive data, including shop drawings and catalog cuts, unless the IFB contains a clause expressly requiring the submission of the data with the bid, stating the purpose for which the data is required and explaining the consequences of the bid's failure to include it. FAR, 48 C.F.R. § 14.202-5; Patterson Pump Co., B-216133 et al., Mar. 22, 1985, 85-1 CPD ¶ 333. In this case, as the agency points out, the IFB contained no such clause. Thus, the low bidder's failure to submit shop drawings and catalog cuts with its bid did not affect the responsiveness of the bid.

The protest is denied.

  
Harry R. Van Cleve  
General Counsel